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4 Attorneys for Defendant, MARIO RENDA

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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 AIRLINES REPORTING CORPORATION,

11 Plaintiff/Judgment Creditor,

12 v.

13 COMMERCIAL TRAVEL  
CORPORATION d/b/a MATLOCK  
14 TRAVEL, *et al.*,

15 Defendants/Judgment Debtors.

CASE NO. 08-MC-00088

DEFENDANT MARIO RENDA'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
FOR ATTORNEY'S FEES AND COSTS  
PURSUANT TO FEDERAL RULES OF  
CIVIL PROCEDURE, RULE 54 (d)(2)(A)

Date: September 22, 2008  
Time: 3:30 p.m.  
Dept.: 1, 4<sup>th</sup> Floor  
Judge: Hon. Irma E. Gonzalez

Judgment entered: September 4, 2007

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20 **I.**

21 **INTRODUCTION**

22 On August 1, 2008, the Court granted Defendant MARIO RENDA's motion to vacate  
23 Plaintiff AIRLINES REPORTING CORPORATION's ("ARC") default judgment, pursuant to  
24 Federal Rules of Civil Procedure Rule 60 (b)(4), because the default judgment was void based  
25 on a lack of personal jurisdiction. ARC's default judgment against Mr. RENDA was based on

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its claim that Mr. RENDA violated the Agent Reporting Agreement (“ARA”) between ARC and Commercial Travel Corporation dba Matlock Travel.<sup>1</sup> The ARA contains an attorney’s fees and costs clause that provides, in relevant part, “if [ARC’s] action is adjudicated or otherwise resolved in favor of the Agent, ARC shall reimburse the Agent for all costs incurred by it, and for the reasonable fees of its attorneys in defending itself against ARC’s action.” Defendant MARIO RENDA’s Notice of Lodgment in support of Motion for Attorney’s Fees and Costs (“DNOLATT”). Ex. 2, p. 12, ¶ XI.E. The ARA is governed by Virginia law. *Id.*, at Ex. 2, p. 13, ¶ XXXI.

Under Virginia law, parties to a contract may adopt provisions that shift the responsibility of attorney’s fees to the losing party in disputes involving the contract. *W. Square, L.L.C. v. Communication Techs, Inc.*, 274 Va 425, 433 (2007). The party who seeks to recover attorney’s fees pursuant to the contractual provision has the burden to present a prima facie case that the requested fees were reasonable and necessary. *Id.*

Accordingly, Mr. RENDA brings this motion under Federal Rules of Civil Procedure, Rule seeks to recover his attorney’s fees and costs in this proceeding pursuant to the attorney’s fees and costs provision in the ARA.

## II.

### STATEMENT OF FACTS

On August 1, 2008, this Court granted Mr. RENDA’s motion to vacate ARC’s default judgment based on a lack of personal jurisdiction. ARC’s claims against Mr. RENDA were based on its contention that he is bound by and violated the ARA between Commercial Travel Corporation dba Matlock Travel and ARC. *See, supra*, fn. 1. The ARA contains the following attorney’s fees and costs provision:

If ARC uses legal counsel to (i) enforce its right to possession of ARC traffic documents (paper format) and airline identification plates, because the agent failed or refused to surrender them upon

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<sup>1</sup> Defendant MARIO RENDA’s Notice of Lodgment in Support of Motion to Vacate Judgment, Filed 06/30/08, Document No. 10-6, Ex. 4, p. 91, ¶ 48 - p. 92, ¶ 50; p. 92, ¶ 57; p. 93, ¶ 64; p. 94, ¶ 68 - p. 96, ¶ 76; p. 100, ¶ 92; p. 101, ¶ 100; p. 102, ¶ 106; p. 103, ¶ 110 - p. 106, ¶ 118; *see generally*, p. 106; ¶ 120 - p. 115; ¶ 161.

demand made pursuant to this agreement, and/or (ii) to otherwise obtain compliance by the Agent with the provisions of this section, the Agent shall reimburse ARC for all costs incurred by it, and for the reasonable attorney's fees of its attorney's, if its action is adjudicated or otherwise resolved in its favor. If its action is adjudicated or otherwise resolved in favor of the Agent, ARC shall reimburse the Agent for all costs incurred by it, and for the reasonable fees of its attorneys in defending itself against ARC's action. The term 'costs' as used herein shall include, but not be limited to, court costs, litigation bond premiums, private investigator fees incurred in attempting to locate traffic documents, and locksmith fees.

DNOLATT, Ex. 2, p. 12, ¶ XI.E (emphasis added).

The ARA provides that it shall be construed under and governed by Virginia law. *Id.* at Ex. 2, p. 13, ¶ XXXI.

Mr. RENDA has incurred \$32,402.50 in attorney's fees and \$752.80 in costs in vacating ARC's void default judgment. As discussed in greater detail below, the language of the attorney's fees provision is broad enough to require ARC to pay Mr. RENDA's attorney's fees and costs in vacating ARC's void default judgment.

### III.

#### **MR. RENDA IS ENTITLED TO RECOVER HIS ATTORNEY'S FEES AND COSTS AGAINST ARC IN THIS ACTION UNDER VIRGINIA LAW AND THE BROAD LANGUAGE OF THE ATTORNEY'S FEES PROVISION**

Federal Rules of Civil Procedure, Rule 54(d)(2)(A) allows a party to bring a motion for attorney's fees and nontaxable expenses within 14 days after the entry of any decree or order from which an appeal lies. Fed. R. Civ. P. 54(a) & 54(d)(2)(A) & (B)(I). The moving party must specify the order and the statute, rule or other grounds entitling him to the award. Fed. R. Civ. P. 54(d)(2)(B)(ii). Here, Mr. RENDA is entitled to an award of his attorney's fees and costs under the ARA and Virginia law.

Virginia law provides that parties to a contract may adopt provisions that shift the responsibility of attorney's fees to the losing party in disputes involving the contract. *W. Square, L.L.C., supra*, at 433. The language of the attorney's fees and costs provision at issue here is extremely broad. Notably, the provision does not use the term "prevailing

party,” nor does it require an adjudication on the merits. To the contrary, the provision states that the agent is entitled to reimbursement of attorney’s fees and costs when ARC’s action is “adjudicated *or otherwise resolved in favor of the Agent*, . . .” DNOLATT, Ex. 2, p. 12, ¶ XI.E (emphasis added).

The provision also allows for the recovery of all costs incurred in an action, and not just litigation costs. *Id.*

Here, ARC contended that Mr. RENDA was bound by the ARA. Mr. RENDA has obtained a resolution in his favor through his successful motion to vacate ARC’s default judgment. The plain language of the ARA allows Mr. RENDA to recover his reasonable attorney’s fees and all costs he has incurred in securing this favorable result.

#### IV.

#### **THE ATTORNEY’S FEES AND COSTS MR. RENDA SEEKS ARE RECOVERABLE BECAUSE THEY WERE REASONABLE AND NECESSARY**

The Virginia Supreme Court has identified the following factors for consideration in determining whether attorney’s fees are reasonable:

1. The time and effort expended by the attorney;
2. The nature of the services rendered;
3. The complexity of the services;
4. The value of the services to the client;
5. The results obtained;
6. Whether the fees incurred were consistent with those generally charged for similar services; and
7. Whether the services were necessary and appropriate.

*W. Square, L.L.C., supra*, at 433-434.

Mr. RENDA’s counsel, John J. Freni, has submitted invoices and work-in-progress reports that are itemized per task performed and time per task. DNOLATT, Ex. 1. Mr. Freni’s hourly rate for legal services is \$325 per hour. August 15, 2008 Declaration of John J. Freni in Support of Motion for Attorney’s Fees & Costs (“Freni Decl. Att.”), p. 2,

¶ 2, l. 4. Mr. Freni has been practicing law in San Diego County for over 20 years. Freni Decl. Att., p. 1, ¶ 2, l. 24 - p. 2, ¶ 2, l. 4. He is a Master in the Enright Inn of Court and he enjoys an “AV” rating with Martindale Hubbell. *Id.* His hourly rate is comparable to the rates charged by other attorneys in the San Diego County legal community with similar backgrounds and experience. *Id.* at p. 2, ¶ 3, ll. 5-7.

As the itemized invoices and work-in-progress reports demonstrate, each task performed on behalf of Mr. RENDA was necessary to the successful resolution of this proceeding. ARC refused to stipulate to a stay of enforcement, which required Mr. Freni to prepare an *ex parte* motion for the issuance of a stay pursuant to Federal Rule of Civil Procedure, Rule 62. *Id.* at p. 2, ¶ 4, ll. 8-15. ARC refused to postpone its motion for an assignment order until after the Court ruled on Mr. RENDA’s motion to vacate, which required Mr. RENDA to incur attorney’s fees for the preparation of an opposition to the motion, which was ultimately rendered moot because of the Court’s ruling on Mr. RENDA’s motion to vacate. *Id.*

The services provided were significantly complex. Mr. RENDA’s challenge to the default judgment was based on the doctrine of collateral estoppel, as it exists under Virginia’s laws. In order to successfully prosecute the motion, Mr. Freni was required to obtain court records from the United States District Court for the Eastern District of Virginia and research and argue Virginia law. *Id.* at p. 2, ¶ 4, ll. 8-10.

The value of the services to Mr. RENDA is self-evident. Through the motion to vacate, Mr. RENDA has eliminated a default judgment in the principal amount of \$701,942.81.

Mr. RENDA respectfully submits that the \$32,402.50 in attorney’s fees and \$752.80 in costs he has incurred in eliminating ARC’s default judgment were reasonable and necessary.

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V.

**CONCLUSION**

For the foregoing reasons, Defendant MARIO. RENDA respectfully requests that the Court award him \$32,402.50 in attorney's fees and \$752.80 in costs, pursuant to the contract at issue in this action.

Dated: August 15, 2008

JOHN J. FRENI, ESQ.  
A Professional Law Corporation

By: s/ JOHN J. FRENI, ESQ.  
Attorneys for Defendant, MARIO RENDA